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May 23, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation
in MM Docket No. 92-266

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's rules, 47 C.F.R. § 1.1206(a)(1), I have enclosed two copies of a letter (w/ enclosure) I sent by hand today to Meredith Jones and Paul D'Arbi, both of the Cable Services Bureau.

Thank you for your attention to this matter. Please call me with any questions regarding this filing.

Sincerely,

William E. Cook, Jr.

Enclosures

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May 23, 1995

BY HAND

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
Room 918
2033 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation
in MM Docket No. 92-266

Dear Ms. Jones:

Susan Littlefield, President of the National Association of Telecommunications Officers and Advisors, asked that I forward to you the enclosure. The enclosure addresses issues NATOA believes should be considered as part of any Commission decision to change the cable rate review process from a quarterly to a yearly review process.

Pursuant to the Commission's ex parte rules, two copies of this letter and the enclosure are being filed today at the Secretary's office.

Please call me if you have any questions regarding the enclosure.

Sincerely,

William E. Cook, Jr.

Enclosure

cc: Paul D'Ari

EX PARTE PRESENTATION: MM Dkt 92-266

National Association of Telecommunications Officers and Advisors
FCC Liaison Committee

4/10/95

AREAS OF CONCERN - RATE REGULATION ISSUES

1. Quarterly increases are difficult to review, and create too-frequent rate increases for subscribers. Any Commission proposals which result in 8 rounds of rate regulation per year are completely unworkable and unrealistic.

   Local Franchise Authorities support the concept of once-a-year rate reviews if concerns can be addressed and rules are crystal clear.
   LFAs are open to "rate years" that vary from system to system, or operator to operator, if such rate years are jointly set by both the LFA and the operator...based perhaps on operator budget year, program contract year, LFA fiscal year, or some other appropriate base.
   This also reduce chances of the FCC being hit with 100% of all CPST filings at once.

   Using this model, especially tied to a budget year, the so-called "regulatory lag" is a non-problem if all supporting documentation is provided in a timely fashion. Decisions can be made before the budget year begins.

   Operators might find the rate review process faster if all information was provided to the LFA on the front end, ensuring that it is indeed "easily verifiable by the regulatory authority", to quote Cox.

2. LFAs have been hampered in completing prompt BST rate-makings by incomplete filings, insufficient information / attachments, slow response times to inquiries, or refusals to respond to requests for clarification or supporting data.

   LFAs would like complete, unambiguous rules for:
   a) Programming contracts and costs issues
   b) External costs calculations and justifications
   c) Incorrect, unrefreshed and/or old data

3. LFAs have also been extremely hampered in prompt BST rate-makings because the FCC has not responded to LFA requests for clarifications/guidance when form instructions and/or rules conflict, or when the FCC issues new rules part-way through the rate-making process.

   The FCC has chastised LFAs or remanded BST decisions which were made in good faith after the FCC refused to provide guidance or clarification. Any new procedures should guarantee a maximum FCC response time to a LFA request for guidance or clarification, as well as affirm how much LFA discretion will be supported by the FCC.

4. LFAs cannot reasonably review current quarterly increases until they have established both 393 and 1200 benchmark rates, or completed Cost of Service Reviews under two different set of rules for pre-May 15 and post-May 15, 1994 rates.

   Any new procedures must allow an adequate period for completion of current and pending rate cases at the local and federal level.
   A moratorium for 1 or 2 quarters may be needed to accomplish this task.
   Alternatively, procedures could be developed which allow LFAs to fold current cases into the new rules under which rates may be looked at both retrospectively and prospectively.

5. Current FCC rules and interpretations encourage Operators to not comply with the process: Refund liability deadlines, tolling, accounting and final rate order deadlines, etc have to be met

despite lack of cooperation from Operators, who - in fact - are actually rewarded for that behavior.

Refund liability deadlines for BST must be eliminated. LFAs should not be held to a stricter standard for BST than the FCC is for CPST.
LFAs must have adequate time and information to review rates.
FCC must correct problems with their deadline rules - City Councils and Franchise Authorities do not always meet or remain in session within FCC mandated periods for LFA response.
Operators should be penalized - not rewarded - for stalls and non-compliance. This would encourage operators to comply with old and new processes.

6. Program contract rates are set in advance for specified periods, allowing operators to prospectively know their exact contracted costs (within certain variable parameters such as penetration, etc). Certain other fixed external costs may also be contracted and therefore known in advance.

We encourage mutual exploration of limited appropriate and reasonable parameters for prospectively setting rates based on actual and verifiable costs (not projected costs) for a particular future period.
We believe there may be appropriate methods for "truing up" of certain other appropriate previously incurred costs which can be plugged into the next year's rate.

7. Operators have benefitted from numerous "windfalls" as a result of current rate regulation rules: theoretical taxes added to rates when no taxes or lower taxes were actually paid; attempts to pass through as external costs eventual compliance with existing franchise requirements that had been previously ignored under deregulated rates; inflation factors and external cost add-ons that can result in "double dipping". Such practices have caused subscribers to pay higher rates than they should.

LFAs would support a system in which operators can only recoup actual costs, and in which the allowable external costs are truly limited to uncontrollable outside costs, not internal or operational business decisions / practices, or theoretical expenses.
Additionally, correction of previously underpaid franchise fees, or previous failures to comply with unmet PEG/other requirements, should not be eligible for external cost treatment.

8. Upgrades to plant are rare occurrences, and peculiar to the facts and situations of individual systems and/or franchises.

The FCC has clearly stated that upgrades (other than franchise-mandated major upgrades) are the choice of operators, and not appropriate for pass-through costs. Ops facing a potentially competitive environment must make business decisions about where to expend their profits...disbursed to shareholders or reinvested as capital. Also, POCS should not subsidize new ventures any more that POTS should subsidize VDT deployment.

9. Satellite channel additions are usually within the control and option of the operator. Most of the "must-carry" broadcast additions are already completed; new ones are rare occurrences peculiar to facts and situations of local communities.

We believe that voluntary or selective additions can be timed for compatibility with the "rate review year" and operators who wish to add channels at other times do so by their own choice, recouping those costs (if any) in the next year's revised rate.

Many industries time their business plans in conjunction with their regulatory year. While regulation is new for this industry (and they are therefore resistant to its realities) LFAs do not believe that it is impossible to make business plans in conjunction with a

regulatory calendar as well as their own budget calendars. Discussions could occur about what constitutes a true emergency needing adjustment.

Of course NPT channels can be added at any time and the subscriber can chose whether to subscribe to a separate and voluntary tier.

LFAs, who represent subscriber interests, are concerned by the erroneous notion that all subscribers want more and more selections. Our feedback indicates that they would perhaps support more choices...but only if they can actually choose. Subscribers are angry about more channels forcibly included in their monthly fee...they might tolerate $20 for 40 channels, but they do not want to have to pay $30 for 60 channels.

10. It can be argued that Cable is a cash flow business/industry rather than a rate base/rate of return industry such as the telcos. It is not reasonable for Cable to want a combination of both: external cost add-ons plus guaranteed rate of return on those add-ons.
LFAs suggest that inflation increases plus external costs plus interest is not fair to subscribers, nor does it encourage Operators to run a tight ship with reasonable and economical business management. It is in fact double or triple dipping.

LFAs would welcome a thorough discussion of this issue, in order to achieve a truly appropriate regulatory model for this industry.
If refunds remain a component, operators should repay subscribers at the same rate of return they receive themselves (11.25%) or the current interest rate allowed in each state.

11. New rules should be done once, done right, with all issues laid on the table. The FCC can then stand firm in not continuously modifying the new rules. If that means taking a long time to get them right, so be it. New once a year rules should not be used until all current rate cases are settled.

This would encourage operators and LFAs to work together to complete reviews of the base 393 and 1200 rates.

12. With the kind of advance planning possible under a once a year scheme, systems could apply for new rates with the same kind of advance lead time they devote to annual budgets. Operators could not put rates into effect until approved, but they could be approved prospectively.

This creates a win-win-win for Ops, LFAs and subs. It eliminates fluctuating bills, refund review, liability and calculation hassles, while providing real stability for subscribers. It encourages operators to comply with the process, rather than rewarding operators who stall on information and put unapproved rates into effect. LFAs would have adequate time to review rates and still make timely decisions.

13. Franchise Authorities have been tremendously frustrated by the confusion over external costs, and the problems associated with incomplete explanations and form attachments. LFAs feel subscribers are not receiving the rate relief they deserve, and certain costs should be considered the price of doing business.

All program costs decreases, advertising revenues, home shopping commissions and other revenues derived from operation of cable systems must be factored into the rate calculation. Consideration of programming costs should include methodology to prevent operator-owned programming from charging excessive license fees to their owners' systems which become pass-throughs plus 11.25% .

14. Subscribers are directly bearing the increasing costs of federal rate regulation which is supposed to protect them.

Regulatory Fees are not external costs for other FCC-regulated industries.